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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,225	01/24/2005	Peter John Barton	ASZD-P01-804	7196
28120	7590	12/20/2007	EXAMINER	
ROPES & GRAY LLP PATENT DOCKETING 39/41 ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			LOEWE, SUN JAE Y	
			ART UNIT	PAPER NUMBER
			1626	
			MAIL DATE	DELIVERY MODE
			12/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/522,225	Applicant(s) BARTON ET AL.	
	Examiner Sun Jae Y. Loewe	Art Unit 1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 13 and 21-32 is/are pending in the application.
- 4a) Of the above claim(s) 21-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1-24-2005; 7-24-2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 11, 13 and 21-32 are pending in the instant application. Claims 15, 16 and 20 were cancelled by preliminary amendment filed on September 7, 2005. Claims 1-10, 12, 14 and 17-20 were cancelled by amendment filed on November 7, 2007.

Election/Restrictions

2. Applicant's election of Group I, and compound of Example 51

((Piperidin-1-ylsulphonylmethyl)-(4-fluorophenyl)-ketone.) in the reply filed on November 7, 2007 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

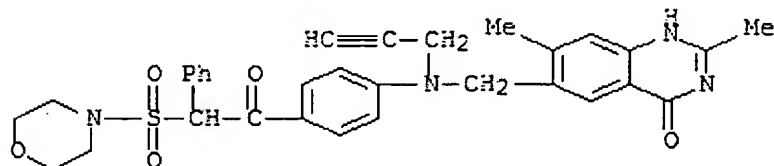
3. MPEP § 803.02 provides guidelines for election of species in Markush-type claims:

“Markush-type claim will be examined fully with respect to the elected species and further to the extent necessary to determine patentability. If the Markush-type claim is not allowable **, the provisional election will be given effect and examination will be limited to the Markush-type claim and claims to the elected species, with claims drawn to species patentably distinct from the elected species held withdrawn from further consideration.

.....

should **>the examiner determine that< the elected species >is allowable<, the *>examination< of the Markush-type claim will be extended. If prior art is then found that anticipates or renders obvious the Markush-type claim with respect to a *nonelected species*, the Markush-type claim shall be rejected and claims to the nonelected species held withdrawn from further consideration. The prior art”

The elected compound appeared to be allowable, therefore the search and examination was extended to the non-elected species of (B=morpholine; m=0; R²/R³=H/phenyl; R¹=N-N-dimethylamino substituted with two R⁷; R⁷=ethynyl or oxoquinazolinyl):



This compound was found to be anticipated by the prior art (below, Section 7).

Pursuant MPEP § 803.02 the provisional election of species was given effect. The search was limited to the elected species, and the non-elected species above. The claims drawn to species patentably distinct from the elected species were held withdrawn from further consideration.

4. Claims 21-32 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected subject matter. Election was made **without** traverse in the reply filed on November 7, 2007.

Information Disclosure Statement

5. The information disclosure statements (dated January 24, 2005 and July 24, 2006) were filed in compliance with the provisions of 37 CFR 1.97 and 37 CFR 1.98. The statements were considered. Signed copies of form 1449 enclosed herewith.

Claim Objections

6. Claims 11 and 13 objected to for containing non-elected subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 11 and 13 rejected under 35 U.S.C. 102(b) as being anticipated by Barker et al.

The reference teaches the compound shown in section 3 as a neoplasm inhibitor (see p. 34, Table I, compound 9).

Conclusion

8. No claims allowed.

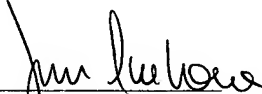
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sun Jae Y. Loewe whose telephone number is (571) 272-9074. The examiner can normally be reached on M-F 7:30-5:00 Est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph McKane can be reached on (571)272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

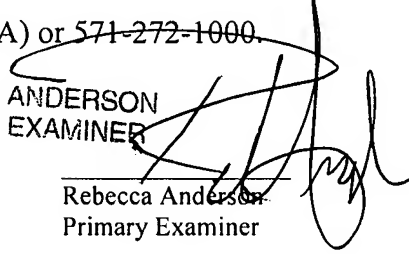
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Sun Jae Y. Loewe
Patent Examiner
Art Unit 1626

REBECCA ANDERSON
PRIMARY EXAMINER


Rebecca Anderson
Primary Examiner